
**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

CATERPILLAR INC.,)	
)	
Petitioner/Cross-Respondent,)	
)	
v.)	
)	
NATIONAL LABOR RELATIONS BOARD,)	
)	Nos. 14-3528 & 14-3729
Respondent/Cross-Petitioner,)	
)	
and)	
)	
UNITED STEEL, PAPER AND FORESTRY,)	
RUBBER, MANUFACTURING, ENERGY,)	
ALLIED INDUSTRIAL AND SERVICE)	
WORKERS INTERNATIONAL UNION,)	
AFL-CIO-CLC,)	
)	
Intervening Respondent.)	

**CATERPILLAR’S MOTION TO SEAL JOINT EXHIBITS 1 AND 2
AND FOR AN EXTENSION OF TIME TO FILE AGENCY RECORD**

Petitioner/Cross-Respondent Caterpillar Inc. respectfully moves this Court to place under seal Joint Exhibits 1 and 2 from the record in the underlying hearing in this case, and for an extension of time until seven days after the Court rules on this Motion for filing the agency record in this case. In support of this Motion, Caterpillar states as follows:

1. On January 8, 2015, the National Labor Relations Board (“NLRB”) filed with this Court an Unopposed Motion to Seal a Portion of the Record. Dkt. 18. That Motion asked this Court to place under seal General Counsel’s Exhibit 32. *Id.*

2. On January 9, 2015, this Court granted the NLRB’s Unopposed Motion to Seal a Portion of the Record, and directed the clerk of the court to maintain General Counsel’s Exhibit 32 under seal. Dkt. 19.

3. General Counsel’s Exhibit 32 is a DVD containing a video depicting a re-enactment of an industrial accident at Caterpillar’s South Milwaukee facility. General Counsel’s Exhibit 32 was admitted into the record in the proceedings before the NLRB’s Administrative Law Judge (“ALJ”). In addition, the ALJ granted Caterpillar’s motion to place General Counsel’s Exhibit 32 under a protective order. *See* Dkt. 18, Attachments A and B.

4. Subsequent to the ALJ hearing, the parties in April 2012 jointly moved to reopen the record for the limited purpose of receiving the Parties’ Stipulation of Facts and Joint Exhibits 1 and 2. That Joint Motion is attached hereto as Exhibit A.

5. Joint Exhibits 1 and 2 are two additional DVD recordings which show substantially the same information as is contained on General Counsel’s Exhibit 32.

6. Prior to the hearing before the ALJ, Caterpillar produced the DVD recordings marked as Joint Exhibits 1 and 2 to the Charging Party Union pursuant to a confidentiality agreement. *See* Exhibit B (General Counsel Exhibit 14(a)); Exhibit C (General Counsel Exhibit 14(b)); Exhibit D (General Counsel Exhibit 24).

7. In accordance with the principles underlying the parties' confidentiality agreement, Caterpillar respectfully submits that Joint Exhibits 1 and 2 are entitled to the same confidentiality protection as that accorded to General Counsel's Exhibit 32.

8. Caterpillar intended, upon the ALJ's receipt of Joint Exhibits 1 and 2 into the record, to move that those exhibits be placed under a protective order, similar to General Counsel's Exhibit 32. However, the ALJ denied the parties' Joint Motion and did not admit Joint Exhibits 1 and 2 into the record. *See* Exhibit E (ALJ Decision dated September 5, 2012), page 5, footnote 13.

9. Subsequently, the NLRB issued a Decision and Order which reversed the ALJ's denial of the Joint Motion. *See* Exhibit F (NLRB Decision dated April 23, 2013), footnote 1. In particular, the NLRB stated: "In the interest of factual accuracy, we reverse the judge's ruling denying the parties' joint motion to reopen the record to receive their Stipulation of Facts and Jt. Exhs. 1 and 2. The joint stipulation makes clear that Jt. Exhs. 1 and 2 are the DVDs actually produced to

the Union, as opposed to GC Exh. 32, admitted at hearing, which the judge improperly identified as the DVD produced to the Union.” *Id.*

10. Because General Counsel’s Exhibit 32 and Joint Exhibits 1 and 2 contain substantially the same information, the same rationale that justified sealing General Counsel’s Exhibit 32 also justifies sealing Joint Exhibits 1 and 2. All three exhibits are video recordings that contain and show confidential business information pertaining to the methods and processes by which Caterpillar performs certain production operations at its South Milwaukee facility. As the ALJ noted in granting Caterpillar’s motion to seal General Counsel’s Exhibit 32, Caterpillar’s witnesses provided testimony that the video depicts certain efficiencies in Caterpillar’s manufacturing methodologies which have not been previously disclosed to Caterpillar’s competitors, including specific competitors identified by the witnesses. *See* Dkt. 18, Attachment A, p. 375, lines 6-20.

11. These methods and processes give Caterpillar an economic advantage, and public disclosure would likely cause Caterpillar to suffer a competitive injury. Therefore, Caterpillar respectfully submits that Joint Exhibits 1 and 2 should be placed under seal before this Court. *See, e.g., Baxter Intern., Inc. v. Abbott Labs.*, 297 F.3d 544, 547 (7th Cir. 2002) (documents may be maintained under seal if they “contain a trade secret or something comparable whose economic value depends on its secrecy”); *Ball Mem’l Hosp., Inc. v. Mut. Hosp. Ins., Inc.*, 784 F.2d

1325, 1346 (7th Cir. 1986) (confidential data was properly protected from disclosure based, in part, on concern that competitors could use the data to their advantage); Wis. Stat. Ann. 134.90 (“trade secret” defined for purposes of Wisconsin Uniform Trade Secrets Act as information, including a method, technique, or process, that (1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts to maintain its secrecy that are reasonable under the circumstances); *Formax Inc. v. Alkar-Rapidpak-MP Equipment, Inc.*, 2014 WL 792086, at *3 (E.D. Wis. Feb. 25, 2014) (“Maintaining a document under seal may be necessary where public disclosure of the information would effectively afford ‘other firms an unearned competitive advantage’”) (citation omitted).

12. Moreover, this Motion is narrowly tailored and based on reasonable confidentiality concerns. *See, e.g., KM Enterprises, Inc. v. Global Traffic Techs., Inc.*, 725 F.3d 718, 734 (7th Cir. 2013) (“narrow, specific requests [to seal] will be granted when based on articulated, reasonable concerns for confidentiality.”).

13. The current deadline to file for the NLRB to file the agency record is January 16, 2015. Dkt. 16. Caterpillar respectfully requests an extension of this

deadline in order to ensure that Joint Exhibits 1 and 2 are not publicly disclosed prior to a ruling on this Motion.

14. Caterpillar requests that the deadline for the filing of the agency record be extended until seven days after the Court rules on this Motion.

15. The NLRB, by its counsel, stated that it objects to this Motion to the extent that it seeks to seal Joint Exhibits 1 and 2, but that it does not object to this Motion to the extent that it seeks an extension of the deadline for filing of the agency record.

16. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC, by its counsel, stated that it does not object to this Motion.

WHEREFORE, Caterpillar Inc. respectfully requests that this Court grant its Motion and place Joint Exhibits 1 and 2 under seal and extend the deadline for filing the agency record to seven days after the Court rules on this Motion.

January 16, 2015

Respectfully submitted,

CATERPILLAR INC.

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CERTIFICATE OF SERVICE

I, Joseph J. Torres, attorney for Caterpillar Inc., certify that on this day I caused the foregoing CATERPILLAR INC.'S MOTION TO SEAL JOINT EXHIBITS 1 AND 2 AND FOR AN EXTENSION OF TIME TO FILE AGENCY RECORD to be served via the Court's ECF system upon:

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Dated: January 16, 2015

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